LOW AH THIT

v.

PUBLIC PROSECUTOR

HIGH COURT BORNEO
CHONG SIEW FAI J
[CRIMINAL APPEAL NO. KG.1 OF 1991]
16 APRIL 1992

CIVIL PROCEDURE: *Impropriety of furnishing a second judgment or grounds of decision after appellant sentenced with reasons given after notice of appeal filed - Section 27(3) Poisons Ordinance.*

On his own plea of guilty the appellant was convicted of the offence of being in possession for sale of poison without a licence issued under the Poisons Ordinance 1952, and was sentenced to 4 weeks' imprisonment.

Inter alia, the ground of appeal complains of the impropriety of furnishing a second or further judgment or grounds of judgment after the appellant was sentenced and after notice of appeal was filed.

Held:

[1] The learned Judge took the view that the complaint had merit. The Judge disagreed with the contention of the DPP that the second judgment was not of supplementing, altering or reviewing nature. The appropriate course to take is to ignore the second judgment and give whatever regard and weight to that delivered on the date of sentencing.

[The appeal against sentence allowed and the imprisonment set aside and substituted by a fine of RM1,500 in default 3 weeks imprisonment.]

Cases referred to:
Nathan v. PP [1972] 2 MLJ 101 ***(cons)***
Loh Kwang Seang v. PP [1960] 26 MLJ 271 ***(cons)***
PP v. John Thien [1964] 30 MLJ ci ***(foll)***
Voon Ah Shoon v. PP [1979] 2 MLJ 131 ***(cons)***

Legislation referred to:
Poisons Ordinance 1952, ss. 10(a), (b), 27(3)

For the appellant - Fabian Lim; M/s. Chua & Co.
For the respondent - Thomas Akin

JUDGMENT

Chong Siew Fai J:

On his own plea of guilty the appellant was convicted of the offence of being in possession for sale of poison without a licence issued under the Poisons Ordinance 1952 (the Ordinance) and was sentenced to 4 weeks' imprisonment.

The grounds of appeal are contained in para. 2 of the petition of appeal. At the hearing earlier this morning grounds (a), (b) and (c) were abandoned.

Ground (e) of appeal complains of the impropriety of furnishing a second or further judgment or grounds of decision (the second judgment) after the appellant was sentenced with reasons given and after notice of appeal was filed. I think the complaint has merit. I disagree with

the contention of the learned Deputy Public Prosecutor that the second judgment was not of supplementing, altering or reviewing nature. In the first judgment delivered on 16 November 1990 grounds were obviously given. It was not permissible for the trial Court to subsequently supplement or add to the grounds of decision that had been delivered.

However, that does not render the proceedings bad or void. The appropriate course to take (and is the one which I would here adopt) is to ignore the second judgment and give whatever regard and weight, as may be due to that delivered on the date of sentencing, that is, 16 November 1990. *Nathan v. PP* [1972] 2 MLJ 101; *Loh Kwang Seang v. PP* [1960] 26 MLJ 271; *PP v. John Thien* [1964] 30 MLJ ci.

The learned Deputy Public Prosecutor relied on *Voon Ah Shoon v. PP* [1979] 2 MLJ 131. In my view, that case is of no assistance. It appears from the judgment of Yusoff J (as he then was) that there the learned Magistrate did no more than making findings on the discharge of burden of proof respecting, *inter alia*, the ingredients of the offence and of guilt, adding (and this is important) that "reasons may be given later if necessary." (see p. 132 1st Col. G-I). In our instant case, grounds for the decision were given at the time of sentencing on 16 November 1990.

I would take the remaining 3 grounds of appeal together. I agree with learned Counsel for the appellant that there is no evidence to support the remark of the learned trial magistrate that the poisons concerned would endanger "The life of public". The learned trial Magistrate seemed to have directed her mind on the act of selling. She said: "Here Court consider selling scheduled poison..." (p. 15 of the appeal record). In the present case the charge is for possession for sale (s. 10(a) of the Ordinance) rather than one selling or supplying (s. 10(b) thereof). I am not convinced that the present offence is a revenue offence. On record, the appellant is an old man though no age was given. There is nothing to indicate that he was not a first offender. A fine is, in my opinion, an adequate punishment.

The appeal against the sentence is allowed. The imprisonment sentence is set aside and is substituted by a fine of RM1,500 in default 3 weeks' imprisonment. Exhibits P6(A) to P6(A)(15), that is, all 41 items be forfeited and delivered to the Director of Medical Services or his present equivalent for disposal. (Section 27(3) of the Ordinance).

Also found at [1992] 2 CLJ 1223